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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/928,272 09/12/97 ISKRA

M F-3818

QM41/1106

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EXAMINER

CHO, D

ART UNIT

PAPER NUMBER

3735

DATE MAILED:

11/06/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/928,272

Applicant(s)

Iskra

Examiner

CHO, David J.

Group Art Unit

3735



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-18 is/are pending in the application.

Of the above, claim(s) 10-18 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9, drawn to a collection container assembly, classified in class 600, subclass 576.

II. Claims 10-18, drawn to a method of providing a collection container assembly with an arcuate shaped end, classified in class 156, subclass 380.1.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the finished product may be materially produced by other methods besides "inserting one of said ends into a forming tool having an arcuate shaped recess".

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Ms. Nanette Thomas on November 3, 1998 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims

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10-18 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

5. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin '4,335,730 in view of Burns '5,458,854.

Griffin discloses a collector assembly and specimen tube comprising a first open end 20 and a second closed end 18, wherein the closed end is reinforced by a reservoir tip of reduced diameter so that the tube is adapted for the precipitation of a measured quantity materials. Accordingly, the closed end of Griffin reads on applicant's "second end being configured into at least a partially arcuate shape." However, Griffin does not disclose the partition member.

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Burns teaches a collection assembly useful for collecting small quantities of blood, wherein the closed bottom end 38 represents a partition member, see figure 1. In regards to claim 2, see figure 1; element 47. In regards to claim 4, the closed bottom end 38 clearly is integral with the housing sidewall 22. With respect to claim 7 and 8, see column 5, lines 43-49. With respect to claim 9, it is observed that applicant's specification does not disclose that the dimensions solves any particular problem or produces any unexpected result and therefore such is merely a matter of engineering design choice, and thus does not serve to patentably distinguish over the prior art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Griffin with the partition member as taught by Burns in order to reduce the volume in the housing.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,361,155, 5,533,518, 5,830,154.

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9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David J. Cho, whose telephone number is (703) 308-0073. The Examiner can normally be reached on Monday-Friday from 7:00 am to 4:00 pm.

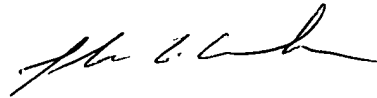
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Weiss, can be reached on (703) 308-2702. The fax number for this Group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

dj cho



Patent Examiner
November 3, 1998



John G. Weiss
Supervisory Patent Examiner
Group 3700